

# **EXHIBIT 4**

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

MDL NO. 2804

CASE NO. 17-md-2804

Hon. Dan A. Polster

IN RE: NATIONAL PRESCRIPTION OPIATE LITIGATION

THIS DOCUMENT RELATES TO:

TRACK THREE CASES

VOLUME I

REMOTE VIDEO DEPOSITION OF

JAMES RAFALSKI

(CONTAINS TESTIMONY DESIGNATED HIGHLY CONFIDENTIAL)

June 10, 2021

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Certified Realtime Reporter,

Registered Professional

Reporter and Notary Public

1 case, if you were to make that inquiry, you would  
2 be talking to the corporate office of these  
3 pharmacies because they are all -- this is a  
4 self-distribution situation where all the  
5 pharmacies are owned by the same company, correct?

6 A. I am speaking about Mr. Crowley and  
7 his visit to Detroit.

8 Q. Right, yeah. Purdue is a  
9 manufacturer, so it is just a completely different  
10 situation, right?

11 A. Well, it is a distribution from a  
12 distributor to a pharmacy. It is not a chain, but  
13 it is the same business. But I will agree with  
14 you.

15 Q. Let's get to the more important  
16 paragraph, the next one. It says, "You may already  
17 know this, but a general pharmacy average for  
18 ordering the eighty milligram" -- you are referring  
19 to Oxy here, right, eighty milligram product?

20 A. Yes.

21 Q. -- "is approximately three hundred to  
22 one thousand dosages units per month. If any  
23 pharmacy you visit is ordering a larger amount and  
24 not proportionate to the OxyContin strengths, then  
25 you might want to investigate the totals more in

1 depth to ensure it is legitimate."

2 Do you see that?

3 A. Yes.

4 Q. So basically what you are telling  
5 Mr. Crowley to be on the lookout for is, hey, if  
6 you see that they are ordering, the pharmacy is  
7 ordering more than a thousand doses, you know, it  
8 is a red flag for you. And you might want to do  
9 your due diligence to see if there really is  
10 something amiss with the pharmacy, correct?

11 A. Conceptually, that would be a good  
12 description of doing due diligence, by looking at  
13 the distributions of strengths of drugs, I agree,  
14 yes.

15 Q. Right. And conversely you are  
16 telling Mr. Crowley that if the pharmacy has less  
17 than a thousand dosage units per month, and  
18 especially substantially less, then that shouldn't  
19 raise his eyebrow, that would not be a red flag,  
20 and he doesn't need to do any further due  
21 diligence?

22 MS. KNIGHT: Object to form.

23 A. I don't think it would completely  
24 preclude it, but generally speaking if it was much  
25 less, a hundred couple dosage units a month, I

1 would tend to agree with that statement.

2 Q. (BY MR. LIVINGSTON:) Now I would  
3 like you to turn to Exhibit 50.

4 (GE Exhibit 50 was marked for  
5 identification.)

6 Q. (BY MR. LIVINGSTON:) And again, this  
7 is something that our data consultants, using the  
8 data that has been produced in this case, the OARRS  
9 data, performed at our request. And this is  
10 basically the average monthly oxycodone eighty  
11 milligram dosage units dispensed by Overholts  
12 Pharmacy. Do you know who Overholts Pharmacy is?

13 A. It's -- yes, generally speaking.

14 Q. Who is Overholts?

15 A. Well, it's an independent pharmacy.  
16 I --

17 Q. And do you know what happened to  
18 Overholts?

19 MS. KNIGHT: Mr. Livingston, you need  
20 to let Mr. Rafalski finish his answer.

21 MR. LIVINGSTON: I'm sorry. I  
22 thought he was finished. I'm just trying to move  
23 it along.

24 MS. KNIGHT: Well, we've spent all  
25 morning talking about areas that he doesn't have

1 opinions on. You can let him finish his answer.

2 A. I recall seeing it on one of  
3 Dr. McCann's charts, and it's in either Lake or  
4 Trumbull County. I know it was a high dispenser,  
5 but other than that, I don't have any other  
6 information now with regard to what happened with  
7 that pharmacy.

8 Q. (BY MR. LIVINGSTON:) Well, Overholts  
9 was eventually shut down and its owner sent to jail  
10 for, you know, diverting opioids. But you see  
11 there that Overholts is well above your one  
12 thousand dosage units cutoff, correct?

13 A. It does -- the chart does say that.  
14 If it's accurate, I agree.

15 Q. Yeah. So if you were investigating  
16 Overholts, this would have been a red flag for you  
17 that they were well above your cutoff, correct?

18 A. It would have definitely required  
19 some scrutiny.

20 Q. Is okay. And if you -- do you know  
21 who the Franklin Pharmacy is, where that  
22 pharmacy --

23 A. I do not.

24 Q. Okay. That's another pharmacy that  
25 had some issues; in fact, McKesson cut them off at

1     some point. And they were also an independent  
2     pharmacy. And you see that they're also more than  
3     double above your cutoff; do you see that?

4             A.       I do. But just -- just for  
5     clarification, I think my email to Mr. Crowley was  
6     a couple of years earlier. And I'm not so sure  
7     that as time went on, a thousand would have been --  
8     a thousand a month would have been accurate, as  
9     that use of that drug escalated rapidly, just  
10    pointing that out to you.

11            Q.       Well, are you saying that the number  
12    would have gone up or down?

13            A.       My number of a thousand would have  
14    went up.

15            Q.       Okay.

16            A.       Early guidance that I received first  
17    in Detroit would be oxycodone products. All  
18    oxycodone products in the year would have probably  
19    been under -- well, under probably ten thousand  
20    when I first started.

21            Q.       Okay. In any event, so are you  
22    saying that maybe Franklin wouldn't have raised  
23    your eyebrows if you had investigated Franklin  
24    because the dosage cutoff was more than a thousand?

25            A.       Just looking at the chart and seeing

1     those numbers, it would be outside of the norm, but  
2     that doesn't mean that it's diverting or there's  
3     some illicit conduct, although if it ranked high  
4     compared to all other pharmacies, it bears some  
5     scrutiny but there could be an explanation.

6                     That's the essence -- interestingly,  
7     that's the essence of due diligence is to determine  
8     whether or not that the bar graphs like this are  
9     legitimate or illegitimate dispensing.

10                    Q.     We don't need to talk about  
11     nondefendants, but if we skip ahead, there's all  
12     defendants and then there's Giant Eagle by its  
13     lonesome. Do you see that all defendants is just a  
14     small fraction of the thousand dosage units cutoff  
15     that we've been speaking about?

16                    A.     Yes, but again, in this chart, we're  
17     talking about the eighty milligrams hydrocodone --  
18     or oxycodone tablets, so we had some other  
19     activities that occurred during the time frame.  
20     Had the reformulation of the oxycodone, OxyContin  
21     eighty milligram. That caused a huge shift to the  
22     thirty milligram oxycodone.

23                    So there's other factors to  
24     determine. Looking at this specific drug over this  
25     wide time frame, it's concerning with the data that



1 we see there.

2 Q. But looking at this -- this metric  
3 alone, if you were to have looked at all defendants  
4 or Giant Eagles of dispensing of eighty milligram  
5 oxy during this time frame, that would not have  
6 raised any concerns on your part?

7 MS. KNIGHT: Object to the form.

8 A. I don't know that I would have ever  
9 looked at it in this manner. Again, that's a  
10 really wide time frame for the data, so I don't  
11 know how the data would change if we looked at each  
12 year.

13 I'm always cautious to just look at a  
14 chart and make some kind of assumptions or  
15 determinations. I mean Overholts generally -- I  
16 mean, Overholts would be a concern, obviously. But  
17 then I don't know what the time frame of  
18 Overholts's conduct is.

19 So just clarifying, just looking at a  
20 chart gives some indications, but it's not the  
21 strength that I think you're trying to apply to it  
22 in regards to the questions to me.

23 Q. (BY MR. LIVINGSTON:) Just turn to  
24 the next page on this exhibit, there's another  
25 chart, average monthly oxycodone eighty milligram